

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine
the Commission's Post-2005 Energy
Efficiency Policies, Programs, Evaluation,
Measurement and Verification, and
Related Issues.

Rulemaking 06-04-010
(Filed April 13, 2006)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE GAMSON DENYING
PETITION FOR MODIFICATION**

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I. INTRODUCTION

Pursuant to Rule 14.3 (d) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these reply comments on the Proposed Decision Denying Petition for Modification (PD). DRA responds below to the Comments of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SCE) and Southern California Gas Company (SoCalGas)¹ on the APD, filed November 24, 2008 (Utilities' PD Comments).

II. DISCUSSION

A. The Utilities' Statement That They Had "No Opportunity To Respond"² To Changing Energy Savings Metrics Is Incorrect.

The Utilities state that the incentive mechanism "should be based on a framework which will allow energy efficiency programs run by a utility to return meaningful

¹ DRA's comments refer to PG&E, SCE, SDG&E and SoCalGas as "Utilities."

² Utilities' PD Comments. p.6.

earnings to the shareholders, should the utility meet the Commission-established superior performance standard.³ DRA concurs with this statement, but not with the implication that in the current situation the Utilities have achieved “superior performance.”

The record provides evidence that the Utilities have failed in key aspects of their role as program administrators of the 2006-08 energy efficiency programs, and that this is the root cause of their current predicament. The current Petition for Modification, as well as the previous one, raised issues of uncertainty and risk caused by *ex post* true up. The Assigned Commissioner previously stated that “managing these uncertainties is part of the energy efficiency portfolio administrators’ responsibility”⁴ and provided tools for managing uncertainty in 2005, before the current portfolios were established. These tools include control of process studies and portfolio composition through fund shifting.⁵

The measured performance of energy efficiency programs depends on many variables, but the most controversial and substantial one is the net to gross ratio that is applied to compact fluorescent lamp (CFL) programs. Prior to the implementation of the 2006-08 program, a report noted that “PRG members were frustrated that the utilities used NTG values for a variety of strategies that were outdated, inaccurate, and probably too high.”⁶ This was confirmed in a key evaluation of 2004-05 programs that was

³ Utilities’ PD Comments, p.5.

⁴ October 5, 2007 Assigned Commissioner Ruling Addressing Net-to-Gross Ratio True-Up and Methodology for Lighting Programs in the 2006-2008 Energy Efficiency Portfolios (October 5, 2007 ACR), p.5.

⁵ Regarding process studies, D.05-01-055, dated January 27, 2005, provided utilities with a performance feedback mechanism: “Moreover, it makes sense from a functional standpoint for the IOU Portfolio Managers to be responsible for managing studies that provide them with information needed for day-to-day management of the portfolio, for communicating timely feedback to their implementers and for improving portfolio performance over time.” D.05-01-055, p.119. The Commission provided a budget of \$45 million in 2006-08 for such studies. Additionally, D.05-04-051 established that the Utilities were given control of portfolio composition via fund-shifting rules: “We prefer to take the approach recommended by the ALJ, namely, to allow the IOUs and their advisory groups to develop fund-shifting rules for our consideration over the coming weeks, and submit them for our review with the PY2006-PY2008 program plans.” D.05-04-051, p.27. The [EE Policy] Rules reflect this approach.

⁶ Case Management Study (CMS) dated July 18, 2005, as referenced in October 5, 2007 ACR, Attachment A, page 8.

available in to the utilities no later than June 29, 2007.⁷ Rather than using this impact data or process studies to evaluate this high-risk adjustment, and/or adjust their portfolio implementation, the Utilities' CEOs issued their October 2, 2007 letter, which preceded the first Petition for Modification. The data and the tools available to the Utilities contradicts their claim that "there is no opportunity for the Joint Utilities to respond"⁸ to the updated NTG and other savings parameters, since the 2008 DEER update relied on the completed 2004-05 SFEER study. In fact, the Utilities ignored clear signs that the CFL market was transforming, they failed to shift their portfolios to a degree that would mitigate an obvious risk, and as a result ratepayer funds have been wasted on CFL "freeriders" instead of producing incremental savings from other energy efficiency measures.⁹

B. The Utilities' Contention That The PD "Codifies The Multifaceted Uncertainty And Lack Of Transparency In The Evaluation, Measurement And Verification Process"¹⁰ Is Incorrect.

The Utilities assail the PD as relying on "a DEER Update Process [w]ith Issues in Dispute"¹¹ and complain bitterly about its uncritical and unilateral acceptance of the "Energy Division's comments, efforts and DEER updates" with "no transparency, vetting, or analysis."¹² In fact, the PD clearly states that the Commission "will not pre-determine or intervene in the specific analytical aspects of the Energy Division's review

⁷ 2004-05 Statewide Residential Retrofit Single Family Energy Efficiency Rebate (SFEER) program evaluation, report CPUC-ID#:1115-04, finalized October 2, 2007, but available in draft form June 29, 2007. Presentation of the drafts results included the .62 NTG for CFLs. Preliminary results were shared with the Utilities prior to release of the draft report.

⁸ The Utilities contend similarly in their Comments on the APD that the "utilities have not had a chance to adjust their program design." Utility APD Comments, p.4.

⁹ PG&E illustrates how a decreasing NTG signals market transformation and the need to transition the way from rebate programs. PG&E exparte notice handout from November 23, 2008 meeting with Jamie Fordyce, slide number 3.

¹⁰ Utilities' PD Comments, p. 2.

¹¹ Utilities' PD Comments, p. 5.

¹² Utilities' PD Comments, p. 8.

process which we authorized.”¹³ Instead, the PD would allow review of the Energy Division’s Draft Verification Report,¹⁴ to proceed at a workshop scheduled for December 5, 2008, and continue through finalization on January 15, 2008, at which time the Utilities can make their claims, if any, for interim incentive payments. Thus, there is a process through which the Utilities can discuss the “numerous errors and omissions”¹⁵ that they allege are in the Draft Verification Report, and obtain clarity about where they perceive a lack of transparency.

The PD correctly notes that the process “could result in interim incentive payments of anywhere from zero to \$152 million.”¹⁶ Thus, the PD does not “predetermine” the issue of incentive payments, but instead concludes correctly that the harm to ratepayers in paying non-refundable incentives to which the Utilities may not be entitled, outweighs the harm to shareholders of a short delay in potential payments.

While DRA supports the process outlined in the PD, it would not oppose a modification of the current process to provide for Commission approval of the incentive claims. DRA originally proposed that the Utilities’ interim incentive claims be filed as either an application or an Advice Letter subject to General Order 96-B, Section 7.6.2 (which requires resolutions to be approved by the Commission).¹⁷ D.07-09-043 concluded that it would be “equally accurate and more efficient” to implement the current process.¹⁸ While DRA continues to believe that the adopted process should be allowed to continue, if the Utilities are willing to accept the possibility of delayed incentive

¹³ PD, p. 15.

¹⁴ The Energy Division issued the Draft Verification Report on November 18, 2008.

¹⁵ Utilities’ PD Comments, p. 2.

¹⁶ PD, p. 15.

¹⁷ DRA contended that an application or Advice Letter requiring a resolution would “promote transparency and public participation in the process.” April 23, 2007, Comments of DRA in response to , April 4, 2007 Assigned Commissioner’s Ruling Soliciting Further Comment on Procedures for Review and Approval of Interim and Final Earnings Claims, p. 5.

¹⁸ D.07-09-043, p.132.

payments which result from a more rigorous and formalized review process, DRA does not oppose such a modification.

III. CONCLUSION

The Utilities' managers would like the Commission, ratepayers, and their own shareholders to believe that they are unjustly being held accountable for inconsistent regulatory risk that is beyond their control. In fact, the longstanding policy of independent verification reveals that Utility performance is far from superior, and that the Utilities could have, and should have taken action to prevent their current situation. Adopting the PD would not prematurely judge the Utilities' performance, but would instead allow the ongoing process of independent verification to verify savings prior to making any non-refundable incentive payment.

DRA respectfully requests that the Commission adopt the PD, with the change recommended in DRA's Opening Comments to reiterate the correct treatment of cumulative savings, and with the possible additional modification to revise the process for approving interim claims. Adoption of the PD would send a clear signal that the Commission meant what it intended when it adopted an incentive mechanism designed to reward superior performance, and penalize poor performance.

Respectfully submitted,

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December 1, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY
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THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
GAMSON DENYING PETITION FOR MODIFICATION**” in **R.06-04-010** by
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/s/ NANCY SALYER

Nancy Salyer

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